



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

October 16, 1998
AO-98-24

Aaron Medlock, Board Member
Humane Massachusetts PAC
11 Lantern Lane
Arlington, MA 02474

Re: Independent expenditures by PAC

Dear Mr. Medlock:

This letter is in response to your September 25, 1998 request for an advisory opinion regarding planned activities of the Humane Massachusetts PAC ("the PAC").

You have stated that the PAC is planning to make an independent expenditure in support of a number of candidates in the upcoming election. The expenditure may take the form of a slate mailer. You would like to use the mailer to list the PAC's support for a number of state and congressional candidates. The PAC would not, however, donate money to the congressional candidates.

Questions

- (1) Are there any limitations on an independent expenditure in the form of a slate mailer that may be made by the PAC?
- (2) Does the Massachusetts campaign finance law permit the PAC to use a slate mailer to endorse *congressional* candidates?

Answer

- (1) No. The PAC must, however, report all expenditures, including independent expenditures, on schedule B of its campaign finance reports.
- (2) Yes. The Massachusetts campaign finance law does not limit expenditures made in connection with an endorsement of a congressional candidate. You should, however, contact the Federal Election Commission to ensure compliance with federal law.

Discussion

The Massachusetts campaign finance law, M.G.L. c. 55, provides that a PAC may make expenditures for "the enhancement of the . . . principle for which the [PAC] was organized . . ." Expenditures are limited only by the general statutory prohibition against the "personal use" of

campaign funds. The law does not specifically address independent expenditures made by a PAC or otherwise limit expenditures made by a PAC, except for contributions including in-kind contributions made by a PAC to a candidate or political committee. See M.G.L. c. 55, § 6.

An expenditure, whether monetary or in-kind, to benefit a candidate becomes a **“contribution”** subject to applicable statutory limitations if the expenditure is made *in cooperation, consultation, or in concert with, or at the request or suggestion of, the candidate or an agent of the candidate including his or her candidate committee the expenditure is intended to benefit*. In contrast, an **“independent expenditure”** is an expenditure made without such cooperation or consultation “and which is not made in concert with, or at the request or suggestion of, any candidate, or any nonelected political committee organized on behalf of a candidate or agent of such candidate.” See M.G.L. c. 55, § 18A, which requires individuals and entities other than political committees to file independent expenditure reports.

Unlike contributions, independent expenditures made by PACs to benefit a specifically identified candidate or candidates may be made without limit. Although the campaign finance law does not limit such expenditures, PACs are required to report *all* expenditures, including independent expenditures, in accordance with M.G.L. c. 55, § 18. Such disclosure must include the name and address of the candidate the expenditure promotes and the office sought by such candidate. See M.G.L. c. 55, § 18, paragraph 11, clause (8).

The conclusion that independent expenditures may be made without limit is consistent with opinions of the Supreme Court, which has ruled that independent expenditures¹ by PACs are entitled to First Amendment protection. In Buckley v. Valeo, 424 U.S. 1 (1976), the Court stated that independent expenditures, because they have a more removed connection with a particular candidate, are a less likely source for *quid pro quo* corruption. More recently, in Federal Election Commission v. National Conservative Political Action Committee, 470 U.S. 491 (1985), the Court, citing Buckley, struck down a limit on the amount of independent expenditures that may be made by a PAC. The Court emphasized that “the effort to link either corruption or the appearance of corruption to independent expenditures by PACs, whether large or small, simply does not pass [the rigorous] standard of review” which must be used when assessing limitations on First Amendment rights. 470 U.S. at 501. See also Colorado Republican Campaign Committee v. Federal Election Commission, 116 S.Ct. 2309 (1996)(First Amendment prohibits restriction on independent expenditures by political party committee).

Within the context of the Massachusetts campaign finance law, expenditures to benefit federal candidates may be made if consistent with the principle for which a political committee is organized. See M.G.L. c. 55, § 6. and AO-82-14, in which the office advised that a Massachusetts PAC could endorse candidates for federal office and expend money for incidental purposes associated with such endorsements, “provided that such contributions are consistent with the stated purposes” of the PAC. See also IB-82-01 revised May 21, 1997 advising that “contributions by a Massachusetts’ PAC to a non-Massachusetts PAC or a non-Massachusetts candidate are not subject to chapter 55’s contribution limitations. Federal law may, however, subject your committee’s planned endorsement activity to limitations or restrictions. Therefore, you should contact the Federal Election Commission at 1-800-424-9530 to ensure compliance with federal law.

¹ The definition of independent expenditure considered by the Supreme Court in its opinions was substantially similar to the definition set forth in M.G.L. c. 55, § 18A noted above.

This opinion is issued solely within the context of the campaign finance law and is provided based on representations in your letter. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan" followed by a horizontal line.

Michael J. Sullivan
Director